

Conference Engrossed

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

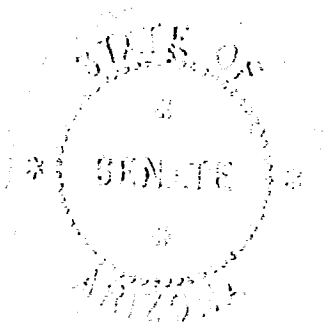
CHAPTER 337

SENATE BILL 1288

AN ACT

AMENDING SECTION 42-5064, ARIZONA REVISED STATUTES; RELATING TO TRANSACTION
PRIVILEGE TAX CLASSIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)



Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 42-5064, Arizona Revised Statutes, is amended to read:

42-5064. Telecommunications classification; definitions

A. The telecommunications classification is comprised of the business of providing intrastate telecommunications services. The telecommunications classification does not include:

1. Sales of intrastate telecommunications services by a cable television system as defined in section 9-505 or by a microwave television transmission system that transmits television programming to multiple subscribers and that is operated pursuant to 47 Code of Federal Regulations parts 21 and 74.

2. Sales of internet access services to the person's subscribers and customers.

B. The tax base for the telecommunications classification is the gross proceeds of sales or gross income derived from the business, including the gross income derived from tolls, subscriptions and services on behalf of subscribers or from the publication of a directory of the names of subscribers. However, the gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales of intrastate telecommunications services to:

(a) Other persons engaged in businesses classified under the telecommunications classification for use in such business.

(b) A direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations parts 25 and 100 for use in its direct broadcast satellite television or data transmission operation by a facility described in section 42-5061, subsection B, paragraph 16, subdivision (b).

2. End user common line charges established by federal communications commission regulations (47 Code of Federal Regulations section 69.104(a)).

3. Carrier access charges established by federal communications commission regulations (47 Code of Federal Regulations sections 69.105(a) through 69.118).

4. Sales of direct broadcast satellite television services pursuant to 47 Code of Federal Regulations parts 25 and 100 by a direct broadcast satellite television service that operates pursuant to 47 Code of Federal Regulations parts 25 and 100.

5. Telecommunications services purchased with a prepaid calling card, or a prepaid authorization number for telecommunications services, that is taxable under section 42-5061.

C. THE GROSS PROCEEDS OF SALES OR GROSS INCOME DERIVED FROM A BUNDLED TRANSACTION OF SERVICES THAT ARE TAXABLE PURSUANT TO SECTION 42-5023 ARE SUBJECT TO THE FOLLOWING:

1. A TELECOMMUNICATIONS SERVICE PROVIDER WHO CAN REASONABLY IDENTIFY THE PORTION OF THE SALES PRICE OF THE BUNDLED TRANSACTION DERIVED FROM

1 CHARGES FOR NONTAXABLE SERVICES IS SUBJECT TO TAX ONLY ON THE GROSS PROCEEDS
2 OF SALES OR GROSS INCOME DERIVED FROM THE TAXABLE SERVICES. FOR THE PURPOSES
3 OF THIS SECTION, THE TELECOMMUNICATIONS SERVICE PROVIDER MAY ELECT TO
4 REASONABLY IDENTIFY THE PORTION OF THE SALES PRICE OF THE BUNDLED TRANSACTION
5 DERIVED FROM CHARGES FOR NONTAXABLE SERVICES BY USING ALLOCATION PERCENTAGES
6 DERIVED FROM THE TELECOMMUNICATIONS SERVICE PROVIDER'S ENTIRE SERVICE AREA,
7 INCLUDING TERRITORIES OUTSIDE OF THIS STATE. ON REQUEST, THE DEPARTMENT MAY
8 REQUIRE THE TELECOMMUNICATIONS SERVICE PROVIDER TO PROVIDE THIS ALLOCATION
9 INFORMATION. THE REASONABLENESS OF THE ALLOCATION IS SUBJECT TO AUDIT BY THE
10 DEPARTMENT.

11 2. NOTWITHSTANDING SECTIONS 42-1118, 42-1120 AND 42-1121, THE
12 TELECOMMUNICATIONS SERVICE PROVIDER SHALL WAIVE THE RIGHT TO FILE A CLAIM FOR
13 A REFUND OF TAXES PAID ON THE BUNDLED TRANSACTION IF THE TAXES PAID ARE BASED
14 ON THE ALLOCATION PERCENTAGE THE TELECOMMUNICATIONS SERVICE PROVIDER HAD
15 DETERMINED TO BE REASONABLE AT THE BEGINNING OF THE TAX PERIOD AT ISSUE.

16 3. THE BURDEN OF PROOF IS ON THE TELECOMMUNICATIONS SERVICE PROVIDER
17 TO ESTABLISH THAT THE GROSS PROCEEDS OF SALES OR GROSS INCOME IS DERIVED FROM
18 CHARGES FOR NONTAXABLE SERVICES.

19 ~~C.~~ D. For THE purposes of this section:

20 1. "BUNDLED TRANSACTION" MEANS A SALE OF MULTIPLE SERVICES IN WHICH
21 BOTH OF THE FOLLOWING APPLY:

22 (a) THE SALE CONSISTS OF BOTH TAXABLE AND NONTAXABLE SERVICES.

23 (b) THE TELECOMMUNICATIONS SERVICE PROVIDER CHARGES A CUSTOMER ONE
24 SALES PRICE FOR ALL SERVICES THAT ARE SOLD INSTEAD OF SEPARATELY CHARGING FOR
25 EACH INDIVIDUAL SERVICE.

26 ~~1.~~ 2. "Internet" means the computer and telecommunications facilities
27 that comprise the interconnected worldwide network of networks that employ
28 the transmission control protocol or internet protocol, or any predecessor
29 or successor protocol, to communicate information of all kinds by wire or
30 radio.

31 ~~2.~~ 3. "Internet access" means a service that enables users to access
32 content, information, electronic mail or other services over the internet.
33 Internet access does not include telecommunications services provided by a
34 common carrier.

35 ~~3.~~ 4. "Intrastate telecommunications services" means transmitting
36 signs, signals, writings, images, sounds, messages, data or other information
37 of any nature by wire, radio waves, light waves or other electromagnetic
38 means if the information transmitted originates and terminates in this state.

APPROVED BY THE GOVERNOR JUNE 4, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 4, 2004.

Passed the House April 15, 20 04,

by the following vote: 49 Ayes,

8 Nays, 3 Not Voting

Jake Flake
Speaker of the House

Spencer L. Moore
Chief Clerk of the House

Passed the Senate March 22, 20 04,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Klu Blunett
President of the Senate

Chaimin Bellington
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1288

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 24, 2004,

by the following vote: 48 Ayes,

6 Nays, 6 Not Voting

Jake Flake
Speaker of the House

Sporman L. Spore
Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 19, 2004,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

John Blumett
President of the Senate

Charmine B. Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 25th day of May, 2004

at 8:30 o'clock a. M.

Jennifer Uparra
Secretary to the Governor

Approved this 4 day of

June, 20 04,

at 10⁴⁰ o'clock A. M.

J. A. Nagel
Governor of Arizona

S.B. 1288

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 4 day of June, 20 04,

at 11:15 o'clock A. M.

Janice K. Brewer
Secretary of State